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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 646

HARRY B. HELMSLEY,
Petitioner

v.

CITY OF DETROIT and CHARLES N. WILLIAMS;
and
COUNTY OF WAYNE and LOUIS H. FUNK,
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS, SIXTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

(Figures in parentheses followed by letter (a) refer to pages of Appendix filed below unless otherwise indicated.)

OPINIONS BELOW

The opinions of the United States Court of Appeals for the Sixth Circuit entered on June 29, 1967 are reported in 380 F(2d) 169.

JURISDICTION

The statutory jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Respondents cannot accept the recitation of Question Presented on p. 3 of the Petition nor the premise on which it is submitted for the following reasons.

First, Petitioner presumes that market value is the sole criterion. It has arrived at this, by misstating the statutory definition of cash value which in Michigan highlights "usual selling price." (Appendix B, p. 30 of Petition.)

Second, said question is not the one considered and disposed of by the majority opinion of the court below.

(a) The question framed by the court below was whether petitioner had proved in the trial court that the State Tax Commission committed fraud, or was guilty of discrimination, in its determinations of the assessments complained of (Appendix A, p. 21-22).

(b) As for the suggestion of violation of the equal protection clause of the Fourteenth Amendment, this was not pressed by petitioner below and was not reached by the court. It was accordingly disposed of by a footnote in the majority opinion (Appendix A, p. 18).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional and applicable statutory provisions appearing in the Petition (Appendix B) will not be duplicated herein.

However, Respondents submit to the Court, as an additional reference in Appendix to this brief, Section 152 of the General Property Tax Act of Michigan (Act 206, Public Acts of Michigan of 1893, Compiled Laws of Michigan 1948, Sections 211.1 et seq., as amended), C.L. Mich. 1948, Sec. 211.152 (M.S.A. 7.210).

COUNTERSTATEMENT

Petitioner commenced four actions against the City and County to recover taxes paid under protest based on assessments against his real property in Detroit, County of Wayne, for the years 1960 through 1963. These actions followed disposition of the earlier declaratory judgment case of *Helmsley v. Detroit,* 320 F.2d 476 (1963) (C.C.A. 6), which had been brought by Petitioner challenging the propriety of the assessments before payment of these taxes.

The Court of Appeals there reviewed Petitioner's allegations and the Michigan authorities to determine whether there was a state remedy within the established construction of the Johnson Act (28 U.S.C.A. Sec. 1341) and held that there was. The opinion of said Court also concluded on the basis of Petitioner's allegations (p. 480) that "the objections which the Plaintiff makes to the assessment of the property in the case before us, if proven, would come within the definition of fraud as given in these cases."

The first assessment was challenged at the administrative level by Petitioner in 1960. As a result of his appeal from an assessment by the Detroit Board of Assessors, the Michigan State Tax Commission fixed the assessment at $3,532,350 (274a). This figure was the result of application of a formula using as a start the basic approach of reproduction costs of the buildings with allowances for depreciation, obsolescence, and other factors (211a). This same assessment was carried forward for 1961 and 1962.

However, in 1962, following a similar appeal from the Board of Assessor's adoption of said figure, the State Tax Commission reduced the assessment to $2,427,710 (275a). The latter figure was also continued for 1963 without any challenge at the administrative level.

When the present actions came up for hearing on the merits, a five-day trial was held. Petitioner's witnesses consisted of an employee who was in charge of the subject property together with several expert witnesses. Three of the latter were real estate men who offered testimony based solely on the market approach that Petitioner's property herein had a market value ranging from $250,000 to $500,000 for the four years, with one of said witnesses admitting an estimate of $600,000 for 1962 and $750,000 for 1963.

Respondents' witnesses consisted of a member of the Detroit Board of Assessors and three staff employees followed by four employees of the Michigan State Tax Commission. Each testified regarding his part in the examination and valuation of this real property primarily by the reproduction cost approach as was uniformly done on all other similar property (213a, 232a) for the years in question. Other witnesses called by Respondents were the former Detroit City Controller and Petitioner's General Manager who was previously the assistant manager of said property.

With the exception of Mr. Cornell, one of the staff employees of the Michigan State Tax Commission, none of Respondents' expert witnesses were cross-examined by counsel for Petitioner.

After hearing testimony, final motions, oral arguments and considering briefs submitted by counsel for the respective parties, the trial judge issued his Findings of Fact and Conclusions of Law (327a). On the basis of his determination, judgments of no cause for action were entered in favor of Respondents on June 28, 1965.

These judgments were affirmed by the Court of Appeals for the Sixth Circuit with Judge Neese dissenting, by opinions issued June 29, 1967, (Appendix A, p. 17).

ARGUMENT

A. NO FEDERAL QUESTION UNDER THE CONSTITUTION

The foregoing statement makes clear that the decisions below were premised on the holdings that Petitioner had not proven any fraud in arriving at the several assessments by the State Tax Commission. Neither the trial court nor the Court of Appeals reached the Federal Constitutional question suggested in the Petition (p. 6) for the reason footnoted by the court below in its opinion (Appendix A, p. 18):

> "In his pleadings plaintiff vaguely alleged a federal question under the Constitution, but this was never pursued in the arguments either at the trial level or on appeal here."

Moreover, any claim of denial of equal protection of the laws is eradicated by absence of any offer of proofs to indicate discrimination in the mode of assessment of Petitioner's real property. Petitioner's counsel admitted that the reproduction cost formula used in assessments by the State Tax Commission with respect to this property was applied to similar properties but claimed that this made no difference.

In view of such lack of discrimination, there is no valid basis for consideration of the decisions by this Court, cited in the Petition at p. 15.

The remaining question was simply as stated by the opinion of the Court of Appeals (Appendix A, p. 22):

> ". . . whether the Tax Commission's valuation was so unreasonable as to amount to fraud."

Reviewing the record made in the trial court, in the light of established construction of the Michigon Constitution and applicable statutes, the majority opinion of the Court of Appeals correctly held (Appendix A, p. 24):

> "The burden of proof to establish fraud on the part of the State Tax Commission was upon the plaintiff. The District Court in considering the evidence, found that no fraud had been proven. We are of the opinion that this finding was correct."

It should be noted that the dissenting opinion below agreed totally with the majority (Appendix A, p. 26).

> ". . . that Michigan law is applicable here, and that the employment by these taxing authorities of the reproduction-cost-less-depreciation-and-obsolescence method of valuation was not improper and was uniformly applied, . . ."

Further on, it stated:

> "I am in agreement further with the majority that, in the absence of fraud or discrimination, the actions of the State Tax Commission of Michigan are final and not to be disputed as to the exercise of judgment by the courts . . ."

The dissent appears to be based primarily on the assumption that the several reductions over a span of five tax years indicate that the earlier higher valuations must have been clearly wrong. It points to one-eighth of a million dollars in improvements added within that period. This was refuted by the majority opinion however (Appendix A, p. 24) which noted continuation of an increasing trend in regard to this property which dated back at least to 1954 when only a 10 per cent (obsolescence) factor was used. It concluded with the following (p. 24):

> "(In addition, it should be pointed out that the decrease in the 1962 valuation was inevitably affected by the demolition of two buildings on the property after the 1960-61 valuation)."

B. THE DECISION OF THE COURT OF APPEALS IS CLEARLY CORRECT

The tax system created by the General Property Tax Act of Michigan, *supra,* is a complete and unified system which applies equally to all municipalities and to all taxpayers on a statewide basis. At the highest level is the State Tax Commission with authority to review assessments which have been appealed to it.

Not only was Petitioner's property valued at lower figures by staff appraisers of the Commission than by Detroit's Board of Assessors, but further factors were applied to arrive at assessments at a state equalized level.

In 1960, the staff appraiser's report to the State Tax Commission, which was Respondents' Exhibit 25 (314a), indicated that in addition to a 50 per cent factor, an average unit ratio of 87.05 was applied to the valuation to produce the reduced assessment.

In 1962, a statement by still another appraiser, which was Respondents' Exhibits 34 and 34a (320a, 325a), shows similar application of a 50 per cent State Equalized Level factor and a further factor of 85.51 per cent of State Equalized Value to assessment.

It follows that Petitioner was duly granted the benefit of equalization not only with other taxpayers in Detroit but on a statewide basis as well. Any complaint that this property was discriminated against is refuted by the record.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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Dated: October 23, 1967.